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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,869	12/30/2003	Steve Hurson	NOBELB.163A	3711

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EXAMINER
LEWIS, RALPH A

ART UNIT	PAPER NUMBER
3732	

NOTIFICATION DATE	DELIVERY MODE
04/24/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary	Application No.	Applicant(s)	
	10/748,869	HURSON, STEVE	
	Examiner	Art Unit	
	Ralph A. Lewis	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 January 2009 and 04 February 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,7 and 18-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3, 7, and 18-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 September 2005* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/23/2009*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Acknowledgement of Request for Continued Examination

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submissions filed on January 23, 2009 and February 4, 2009 have been entered.

Indication of Allowability Withdrawn

The indicated allowability of claim 36in the office action of 12/11/2008 is withdrawn in view of the newly discovered reference(s) to Kumar (US 6,394,806 and US 6,382,977). Rejections based on the newly cited reference(s) follow.

Objection to the Drawings

The drawings filed 9/28/2005 are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “mating component including one or more lever arms or prongs configured to engage the notch” of claims 1 and 28 must be shown or the feature canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Rejections based on 35 U.S.C. 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24, 25 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24 and 25 contradict claims 21 and 22 from which they depend.

In claim 27, it is unclear if the "flanged region" is in reference to the previously claimed implant, mating component or coping. Dependent claims must reasonably relate back to the claims from which they depend.

Rejections based on Prior Art

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 7 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Kumar (US 6,394,806).

As illustrated below in the reproduced 8A of Kumar a dental implant system is disclosed comprised of dental implant having a body portion and abutment portion as claimed. The implant includes a central longitudinal bore having a notch positioned between a threaded section and an anti-rotation section. A mating component having prongs engages the notch.

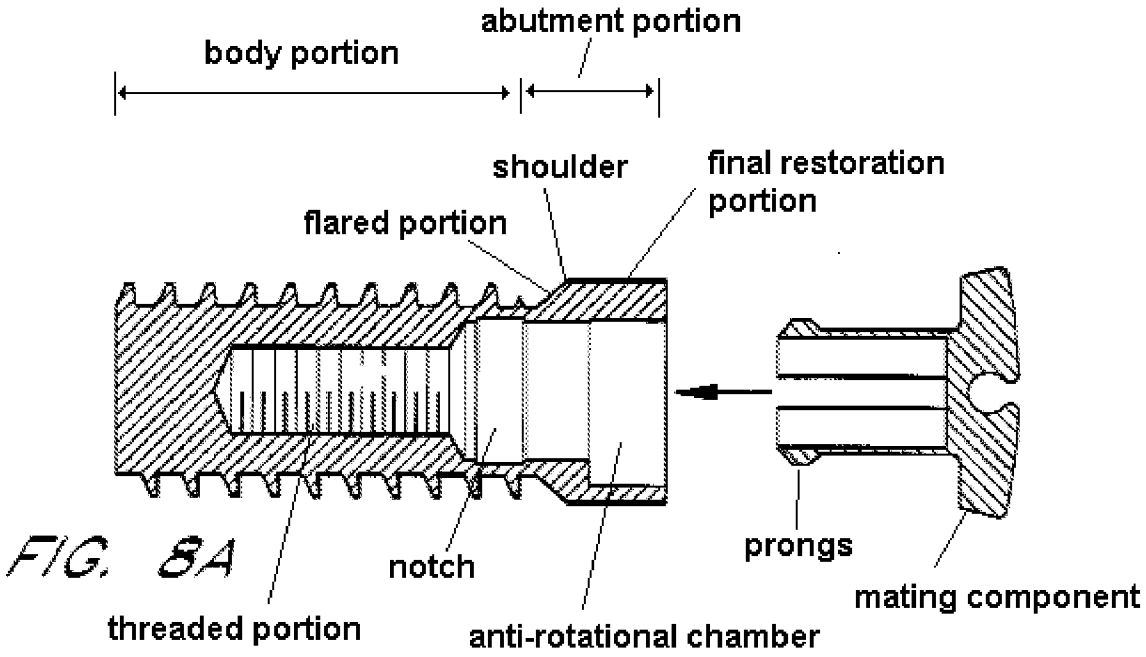

FIG. 8A

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar (US 6,394,806) in view of Kumar (US 6,382,977).

Kumar '806 fails to disclose the claimed coping. However, in a closely related patent Kumar '977 discloses that a coping 32 having an internal cavity (note e.g. Fig 2C) with a standoff bump may be used with the implant 10 in order to form the prosthesis. To have used a Kumar '977 coping 32 with the Kumar '806 system would have been obvious to one of ordinary skill in the art so that one could form a prosthesis to fit the implant.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar (US 6,394,806) in view of Fradera (US 4,790,753).

Fradera teaches the securement of a healing cap 25 to an implant with a screw 26. To have secured a healing cap to the Kumar implant with a screw as taught by Fradera so that the cap may be securely fastened would have been obvious to one of ordinary skill in the art.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar (US 6,394,806) in view of Marlin (US 5,135,395).

Kumar fails to disclose a procedure for manufacturing a prosthesis for the implant disclosed. Marlin teaches the conventional prior art manufacture of a prosthesis with a plastic coping that precisely fits over the abutment, encasing it in stone and then burning out the coupling leaving an opening in which the prosthesis is cast (note particularly column 2, lines 25-35) . To have provided a coping that precisely fits the Kumar abutment and then using the coping to construct a prosthesis in a prior art investment cast technique as that disclosed by Marlin would have been obvious to one of ordinary skill in the art desiring to construct a prosthesis for the Kumar implant.

Obvious-type Double Patenting Rejections

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 30-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,769,913 in view of Kumar (US 6,394,806). Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims of '913 teach the use of an impression cap with injection port and vent holes and the use of a syringe to inject impression material into the cap through the injection port. Merely, providing for a '913 patented cap/method for use with the prior art Kumar implant with prior art insertion means as taught by Kumar et al so that impressions may be made more accurately would have been obvious to one of ordinary skill in the art.

Prior Art

Applicant's information disclosure statement of January 23, 2009 has been considered and an initialed copy enclosed herewith.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712.** Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis
April 22, 2009

/Ralph A. Lewis/
Primary Examiner, Art Unit 3732